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THE CABINET AND CONGRESS: AN HISTORICAL INQUIRY.

BY MISS MARY L. HINSDALE,
RADCLIFFE COLLEGE.

A noted writer on political subjects, Woodrow Wilson, says in his *Congressional Government*:¹ "Before the Republican reaction which followed the supremacy of the Federalists, the heads of the departments appeared in person before the Houses to impart desired information, and to make what suggestions they might have to venture, just as the President appeared in person to read his 'address.'" This statement is one of a large number afloat, which assume that executive officers at one time enjoyed the privilege of speaking on the floors of Congress. Inasmuch as the basis of this impression is a few occurrences indistinctly recorded and still more vaguely cited, it may be worth while to discover from the sources whether they bear out any such view of the early practices of the government.

The occurrences which give color to such an impression may be divided into two groups. Into the first fall three transactions, in which there is no doubt that certain high Executive officers participated in person. The second includes a class of events, of which there are at least twenty, where the real significance of the thing that happened is not so clear on the surface.

Of the first series of these events, the earliest is an appointment² to diplomatic office. On June 16, 1789, John Jay, who was acting as Secretary of Foreign Affairs, under appointment by the old Congress, appeared in the Senate to deliver a message from President Washington, nominating William Short to take charge of the affairs of the United States at the

¹ Page 257.

² *Executive Journal of the Senate*, vol. 1, p. 6. *Journal of William Maclay*, p. 78.

court of France during the absence of Thomas Jefferson. As the message stated that Mr. Jay had orders from the President to lay before the Senate, at such time as that body should order, certain papers in the office of Foreign Affairs which bore upon the subject, an order was passed that this should be done at twelve o'clock on the following day. Accordingly, Mr. Jay appeared before the Senate on June 17, and gave information bearing upon the appointment. On this date the Senate, of its own accord, enlisted the services of the Secretary of Foreign Affairs in the second of the transactions in which an Executive officer participated in person. The subject of this was a consular convention³ with France. The Senate ordered that Mr. Jay lay before their body whatever official papers and information he might possess relating to the matter. More than a month later, July 21, this action was followed up by an order that the Secretary of Foreign Affairs be requested to attend the Senate the following day at twelve o'clock, and to bring with him such papers as are requisite to give full information relative to the consular convention between France and the United States. Agreeably to this, Secretary Jay waited upon the Senate on July 22, and gave information as was desired. The third occurrence of this group, which is the most familiar of all, is the visit⁴ paid by President Washington and Secretary Knox to the Senate Chamber, for the purpose of discussing the terms of a treaty with the Creek Indians. The dry facts of this episode, which is worn quite threadbare by much quoting, are that on August 21, 1789, the President sent to the Senate a notice that he would meet them, at a stated hour on the following day, to advise with them on the terms of a treaty under negotiation with the southern Indians. Accordingly, on Saturday, August 22, he appeared, announcing that he had brought with him his Secretary of War to give every necessary information. However, the business lagged so much that it was put over until the next meeting. On Monday, the 24th, the President and Secretary again appeared, and on this occasion there was less

³ *Executive Journal of the Senate*, vol. 1, p. 7.

⁴ *Executive Journal of the Senate*, vol. 1, pp. 20, 23.

awkwardness and delay in the proceedings. These sessions of August 22 and 24, 1789, are the only times when any President has sat in council with the official Senate. However, the notion that Washington felt so chilled by the manner of his reception that he abandoned all such procedure is not well founded. Senator Maclay ⁵ gives such an impression in his diary, but he looked on everything that he saw at New York and Philadelphia with a jaundiced eye. Moreover, the President's later course ⁶ does not bear it out. On August 4, 1790, he sent to the Senate a message, communicating the draft of a secret article to be incorporated in a treaty with an Indian tribe, which closed with the words: "If the Senate should require any further explanation, the Secretary of War will attend them for that purpose." It is clear that he still held the opinion that such was a proper method of transacting business. However, the Senate promptly agreed to the proposed article, without calling for further explanation.

With regard to this group of occurrences, it should be noticed that it was in every instance an executive session of the Senate, in which the Heads of Departments participated. The matter of business was in one case an appointment to diplomatic office, and in each of the others a treaty. All these events might lead to speculation as to what executive powers the Senate might have developed out of its constitutional right to give advice and consent on these two subjects, if only its members had appreciated their opportunity, while as yet the President had no Cabinet; but they afford no precedent for admitting Executive officers to the proceedings of Congress as a Legislature.

The second and more doubtful group ⁷ of these occurrences includes ten cases in which Secretary Knox waited upon the Senate, and eight in which he waited upon the House of Representatives; also two cases in which Secretary Jay waited upon the Senate. In each of these it can be shown that the Executive officer figured only as a messenger. The usual lan-

⁵ *Journal of William Maclay*, pp. 128-132.

⁶ *Executive Journal of the Senate*, vol. I, p. 55.

⁷ See list at close.

guage of the *Annals of Congress* in recording them is simply: "A message was received by hand of Henry Knox, Secretary of War," or "The following communication from the President was received by Secretary Knox." The significance of these events is at once suggested by certain passages in Maclay's diary, wherein it appears that forms and ceremonies occasioned a good deal of anxiety in the days before the new government began to feel at ease with itself. Vice-President Adams is here recorded⁸ as saying in the Senate: "There are three ways, gentlemen, in which the President may communicate with us. One is personally. . . The second is by a minister of state. The third is by his chamberlain, or one of his aides-de-camp I had almost said, but that is a military phrase." In actual practice the Secretary of War shared for a little while with the President's private secretary the duty of conveying messages, the Secretary of Foreign Affairs serving twice in the same capacity. To quote Maclay again:⁹ "Mr. Lear has for two days past been introduced quite up to the Vice-President's table to deliver messages. . . . There was some talk about it a few days ago; but I understood the sense of the Senate to be that the Head of a Department, if he came to deliver a message from the President, should be admitted to the table; but a private secretary received at the bar."

However, the interpretation of these events should be based upon more precise records than the diarist's. Construed from the language of the *Annals of Congress*, two of the visits of Secretary Knox to the House of Representatives have been held by most respectable but uninformed authority to show an actual participation in the proceedings. According to the *Annals*, the Secretary delivered to the House on August 7, 1789,¹⁰ a message from the President, together with "sundry statements and papers relating to the same;" and on August 10¹¹ he delivered a message, "together with a statement of the troops in the service of the United States." What were

⁸ *Journal of William Maclay*, p. 21.

⁹ *Journal of William Maclay*, p. 127.

¹⁰ *Annals of Congress*, vol. 1, p. 684.

¹¹ *Annals of Congress*, vol. 1, p. 689.

these all-important "statements?" If the language of the *Annals* is indecisive, the *Journal of the House of Representatives* shows that they were not oral communications. Under date of August 7, the *Journal*¹² says: "A message in writing was received from the President of the United States, by General Knox, who delivered therewith sundry statements and papers relating to the same, and then withdrew. The message was then read," etc. For August 10,¹³ the *Journal* runs: "A message from the President, in writing by General Knox, who delivered the same, together with a statement of the troops in the service of the United States; and then he withdrew." This statement of the troops appears in full in the *Journals of Congress*, and includes such details of organization, distribution, wages, clothing, and rations as the Senators would hardly have listened to. In every instance the language of the *Journals* shows conclusively that this class of visits paid by two of the Heads of Departments to the Houses of Congress had no more parliamentary significance than those of Tobias Lear, the President's private secretary.

It is an important fact, moreover, that the Executive officer who figures in all of these events, with only two exceptions, which have no significance, is Knox, the Secretary who had the least influence and the least concern in legislation. The notion that Jefferson, as Secretary of State, sometimes communicated with Congress in person is an error, springing in part from the supposition that, when the Senate summoned the Secretary of Foreign Affairs, July 21, 1789, he was the incumbent of that office; but in reality it was March of the following year when Jefferson assumed his secretaryship. This mistake has also arisen from a wrong interpretation of an entry¹⁴ in Maclay's diary, May 24, 1790, where it is plainly shown that the Secretary of State met a select committee of the Senate, in the hall used by that body, while it was not in session.

However conclusive the proof that Congress did not admit

¹² *Journal of the House of Representatives*, First Session, p. 92.

¹³ *Journal of the House of Representatives*, First Session, p. 96.

¹⁴ *Journal of William Maclay*, p. 272.

the heads of departments to its debates during the formative period of the government, it cannot be denied that it countenanced the principle involved, by passing the act to establish the Treasury Department, September 2, 1789. As is well known, this act includes a provision that the Secretary of the Treasury "shall make report and give information to either branch of the Legislature, in writing or in person, as may be required." There is no reason to suppose that the members of the First Congress saw in this any violation of that clause of the Constitution which enjoins that "no person holding any office under the United States shall be a member of either House during his continuance in office." It is true that the new Executive was regarded with suspicion, so much so that James Madison,¹⁵ the leader of the House of Representatives, referring to the opposition which the attempt to secure the power of removal to the President alone was encountering, expressed the fear that the Executive would be the weak branch of the government. Moreover, the general impression of direct intercourse between the Executive and the Legislature was that it would be abused by the former power. Nevertheless, so far as the writer of this paper has been able to discover, the provision that the head of the Treasury Department might report in person, if so ordered, was not attacked in debate. Whether it was that attention was diverted from it by the onslaught against the provision that the Secretary of the Treasury should digest and report plans for the improvement of the revenue, and for the support of the public credit, wherein the constitutional right of the Lower House to originate money bills was supposed to be threatened, or whether the Executive interest was strengthened for a new victory by the triumph it had lately scored, under Madison's leadership, on the subject of removals, the principle of direct intercourse had an easy triumph. On the day when this section of the bill was voted upon, June 25, Fisher Ames¹⁶ wrote to one of his political friends: "A puerile debate arose, whether the Secretary of the Treasury should be allowed to

¹⁵ *Works*, vol. I, p. 372 (ed. 1900).

¹⁶ *Works*, vol. I, p. 56.

exhibit his reports and statements to the Legislature. The champions of liberty drew their swords, talked blank verse about Treasury influence, a ministry, violation of the privileges of the House by giving him a hearing from time to time. They persevered so long and furiously that they lost all strength, and were left in a very small minority. The clause permitting this liberty passed." The only result of this debate was to change the words "digest and report" to "digest and prepare."

Everybody knows that, notwithstanding this provision, looking to direct communication between Congress and the Treasury, no Secretary of the Treasury has ever reported to Congress in person. Many persons suppose that jealousy of the powers of the Department caused the provision to be a dead letter from the beginning. What are the ascertainable facts about the matter? The House of Representatives, shortly before the adjournment of its first session, passed a resolution¹⁷ that the Secretary of the Treasury be directed to prepare a plan for the support of the public credit, and report the same at its next meeting. At the opening of the second session, the Speaker communicated a letter announcing that the Secretary of the Treasury was ready. Gerry, of Massachusetts, moved that the report be submitted in writing; but of the five members recorded as taking part in the debate,¹⁸ Clymer, of Pennsylvania, was the only one who expressed doubts as to the propriety of oral communication from so great an officer. Fisher Ames, the consistent friend of the Executive, thought that this particular report ought to be in writing; because the more permanent form was more likely to insure the responsibility of the Secretary, while at the same time it would be less liable to be misunderstood. This latter point was elaborated by Gerry in a closing speech. In a plan for supporting public credit, might be comprehended every species of finance. Could the human mind retain with any degree of precision objects so extensive and multifarious.

¹⁷ *Annals*, vol. I, p. 904.

¹⁸ *Annals*, vol. I, pp. 1043-1045.

upon a mere oral communication? These considerations alone ought to be sufficient to induce gentlemen to agree to his proposition of making the report in writing. With this it was decided that the first of Hamilton's great reports should be submitted in writing.

It seems, from the foregoing facts, that the First Congress did not directly face the question of personal communication with the heads of departments in any of its debates. But the Second one met it squarely in a series of discussions that occurred on November 13, 14, 19, and 20, 1792. Inasmuch as it was the action taken on this occasion that has settled the practice of the government on this point, down to the present time, it is surprising that these debates¹⁹ have received so little notice. On November 13, 1792, while the House of Representatives was investigating the defeat of St. Clair's Indian expedition, the following resolution was introduced: "That the Secretary of the Treasury and the Secretary of War be notified that this House intend, on Wednesday next, to take into consideration the report of the committee appointed to inquire into the causes of the failure of the late expedition under General St. Clair, to the end that they may attend the House and furnish such information as may be conducive to the due investigation of the matters stated in the said report." Eleven members spoke against the resolution, and six in favor of it; and the debate was renewed six days later, November 19, on a resolution to call upon the Secretary of the Treasury to report a plan for the reduction of the public debt, no suggestion that he should come to the House in person being included. In both debates, Madison figured as the leader of the opposition, saying that to summon the two Secretaries would introduce a precedent that would lead to perplexing and embarrassing consequences. Accordingly, he was decidedly in favor of written information. In his remarks against the resolution to call upon the Secretary of the Treasury for a plan to reduce the public debt, he set up a kind of defence for abandoning the role of chief supporter of the administration

¹⁹ *Annals of Congress*, vol. 3, pp. 673-694, 696-701, 703-708, 711-712.

in the Lower House for that of leader of the opposition, by saying that in the infancy of the government it might be necessary to interpret the act establishing the Treasury Department with more latitude than was contemplated when it was passed, but that he could see no necessity for it at present. The reason for Madison's change of front was that he was one of the newly-developed anti-Hamilton party. The policy of the Secretary of the Treasury had by this time forced the issue that differentiated the two great political parties. The opponents of a strong central government were particularly hostile to a strong Executive. This was the reason why the Second Congress was more chary of Executive privileges than the First. In general, the enemies of the Treasury policy opposed the resolution to summon the two Secretaries to the House of Representatives; but there was one notable exception. Elbridge Gerry, who had been the most pronounced enemy of the act to establish the Treasury Department, and an opponent of the proposition to make the heads of departments removable by the President alone, said that he was surprised at the apprehensions that some gentlemen appeared to entertain of the measure to introduce the heads of departments into the House; for his part he had no such fears. The Secretaries would attend at the orders of the House merely to give such information, as might be required, and not as members or ministers to influence and govern the determination of the House. The closing words might imply that if the Secretaries were coming as ministers, Mr. Gerry would be opposed to it. But in the debate six days later he made it clear that he did not fear them even in this capacity; for, if the influence of the Secretary was formidable, he conceived that it would be much more dangerous if exerted against a committee than in the whole House. Yet Gerry appears to have been the only man to see that the proposed relation might work to the advantage of the Legislature. The motion to summon the two Secretaries was defeated. Secretary Knox thereupon sent a letter to the House alluding to his anxious expectation of some act which would enable him to attend at the examination upon which they were about to enter. The failure of the proposi-

tion had added to his solicitude. Accordingly, he felt himself called upon to ask of the justice of that body that some mode might be devised whereby he might be present during the inquiry. Nevertheless, the aggrieved Secretary, far from founding any claim upon the fact that he had already visited the House in session eight times, did not even mention it. The only action that the House took was to continue the select committee that had begun the investigation. The resolution to call upon the Secretary of the Treasury for a plan to reduce the public debt was carried.

The foregoing interpretation of these events which occurred in November, 1792, is fully borne out by a letter which Jefferson²⁰ wrote, December 3, (of that year) to Thomas Pinckney. After congratulations upon the Republican successes in the recent elections for Congress, he says: "They endeavored a few days ago to take away one means of influence by condemning references to the heads of departments. They failed by a majority of five votes. They were more successful in their endeavor to prevent the introduction of a new means of influence, that of admitting the heads of departments to deliberate occasionally in the House in explanation of their measures. The proposition for their admission was rejected by a pretty full vote. I think we may consider the tide of this government as now at the fullest, and that it will, from the commencement of the next session of Congress, retire and subside into the true principles of the Constitution."

The position taken by the Second Congress was much strengthened by the appearance of Albert Gallatin in the House of Representatives in 1795. In a memorandum²¹ of his first experience in Congress, Gallatin says that it was his constant effort to keep the Executive within the strict limits of Constitution and of law, and that his first step was to secure a standing committee of Ways and Means.

While Madison was President, a peculiar overture was

²⁰ *Works*, vol. 6, p. 143 (ed. 1892).

²¹ Adams, *Life of Albert Gallatin*, p. 157.

made to him, which has by at least one writer been misconstrued into an invitation to sit with the Senate in council upon foreign affairs. The facts of the matter are as follows: In June, 1813, the President sent to the Senate the nomination of Albert Gallatin, Secretary of the Treasury, to be Envoy Extraordinary to Russia, as a step towards a negotiation to restore peace with England. He also sent the nomination of Jonathan Russell to be Minister to Sweden. The circumstances attending both nominations were so extraordinary that the Senate referred each to a select committee; and after some unsatisfactory correspondence with the Executive, calling for information, it instructed the two committees to confer with the President and to report. The President declined²² to enter into discussion with either committee, stating his reasons to the Senate in a special message dated July 6.

Once, and apparently only once, during this period was the question of giving the heads of departments a hearing in Congress raised in the National Legislature. John Randolph²³ remarked, April 7, 1806: "I say, I wish the heads of departments had seats on this floor. Were this the case, to one of them I would immediately propound the question: "Did you, or did you not, in your capacity of a public functionary, tell me, in my capacity of a public functionary, that France would not suffer Spain to settle her differences with us?" The immediate purpose of this was the malicious one of alienating Gallatin from the President and Madison, and it was probably as serious as most of Randolph's proposals of improvement in the methods of government. From this time to the Civil War the only references to the subject which have been noticed by the writer of this paper are an allusion made by John Adams²⁴ in one of his letters to the Boston *Patriot*, 1809; a suggestion jotted down by John Quincy Adams²⁵ in his *Memoirs*, 1819; and the advocacy of the plan of Joseph

²² *Executive Journal of the Senate*, vol. 1, pp. 384-385.

²³ *Annals of Congress*, vol. 15, p. 984.

²⁴ *Works*, vol. 9, p. 272.

²⁵ *Memoirs of John Quincy Adams*, vol. 4, p. 457.

Story,²⁶ in his *Commentaries on the Constitution*, which appeared in the form of a book in 1833.

Although the National Government never practiced the system of bringing the Executive into direct contact with the Legislature, the history of the United States affords a fair instance of giving it a trial. The experiment of the Confederate States has such a practical bearing upon the question whether the system is adapted to this country, that it should have received more attention from publicists and legislators. The Provisional Constitution, under which that government was carried on from February 8, 1861, to February 22, 1862, did not, like the Federal Constitution, contain an inhibition on officers of the government serving as members of Congress. It assumed the creation of Executive Departments, and six of these were promptly established by law. As soon as the Congress of Delegates, sitting at Montgomery, had chosen a President, Jefferson Davis, appointments to these offices were made. The Secretary of State, Secretary of the Treasury, and the Postmaster-General were chosen from among the members of Congress, introducing a most novel feature into the political systems of the country; at the same time, the Secretary of War, Secretary of the Navy, and the Attorney-General were chosen from outside of Congress. This distribution of offices was continued throughout the year, although changes were made in the personnel. In May, 1861, when the Congress of Delegates had convened for its second session, another step was taken by passing a resolution²⁷ to the effect that the members of the Cabinet of the Confederate States, not members of Congress, have the privilege of discussing any measures appertaining to their respective departments.

Thus, the system which was proposed a little later as a reform for the National Government, was in actual operation during three sessions of the Provisional Congress of the Confederate States. However, a complete system of standing

²⁶ Story, *Commentaries on the Constitution*, sec. 869.

²⁷ *Journal of the Congress of the Confederate States of America*, vol. 1, p. 182.

committees had been inaugurated before the laws to establish the Executive Departments were passed. Moreover, it does not appear that it was the practice to digest legislation before the whole House, under the leadership of the Cabinet. On the contrary, bills were ordinarily referred to the standing committees in charge of the particular subjects of legislation to which they appertained. When calls were made upon the heads of departments for information, they were answered in writing, and communicated to the Assembly through the Speaker.

The Permanent Constitution was framed during the first session of the Provisional Congress, and was appointed to go into operation early in the following year. This document was modelled after the Constitution of the United States, and includes in its proper connection the provision²⁸ that the officers of the government shall not serve as members of Congress. However, the following provision is added: "But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing measures appertaining to his Department." This was a distinct withdrawal from the system which the Provisional Constitution made possible, and which President Davis put into partial operation by his appointments. The closer connection between the two branches of government was regarded with favor by such distinguished men as Alexander H. Stephens and Robert Toombs. The *Journal* of the Congress, while sitting as a Constitutional Convention, shows that both of these gentlemen proposed amendments²⁹ to the clause of the Permanent Constitution which would leave the way open for the development of the parliamentary system. Mr. Stephens³⁰ says in his *War between the States*, that it was his wish that the President should be required to appoint his Cabinet from members of one or the

²⁸ *Constitution of the Confederate States of America*, Art. I, section 6, clause 2.

²⁹ *Journal of the Congress of the Confederate States of America*, vol. 1, p. 863.

³⁰ Stephens, *War between the States*, vol. 2, p. 338.

other House of Congress, adding that he always regarded this feature of the British Constitution as one of the most salutary principles in it. Considering the circumstances, it is a surprising fact that after the government was organized under the Permanent Constitution no law was ever passed to admit the heads of the Executive Departments to the floors of either House. The power that the Constitution thus permitted was never exercised. Thus the only vestige of the system that remained in the laws, after February, 1862, was in the act establishing the Treasury Department. This measure, like that which was passed by the National Congress in 1789, for the same purpose, provided that the principal officer in that Department might report in person or in writing, as he was directed. However, the *Journals of the Congress* contain no evidence that he ever communicated with that body in person.

The fact that the Congress in which eleven of the Southern States were represented failed to put this expedient into operation, after it had been on trial a year, suggests the thought that there is some obstacle to its success deeply rooted in the institutions of the people. The circumstances could never be more favorable to it in this country. An opportunity was at hand to cut away those parts of the American system which were found to be unsatisfactory, or to uproot it altogether. Moreover, the English system was now seen working in its perfection, if the Southern people wished to copy it. It was also the hour of a great crisis, one of those seasons in which the system that fuses together the legislative and executive branches of government, operates to the greatest advantage. Although there could be among the people no tradition of political leadership, such as survives the decay of feudal orders, there was a sentiment that bears some resemblance to it which had been fostered by their industrial institutions. But, notwithstanding these favorable conditions, the way for the development of the system was closed up.

The Civil War brought the subject into discussion in the National Congress, where it had hardly ever been mentioned, since that body took a stand against summoning two Secretaries to its floors in 1792. The war made Congress very

dependent upon the Executive Departments, and rendered prompt and coherent legislation necessary. The regular and time-honored method of listening to the Secretaries in the committee-rooms seemed too remote and too uncertain for the crisis of the hour. Hence, George H. Pendleton, then a Representative from Ohio, introduced, February 8, 1864, a resolution "to provide that the heads of Executive Departments may occupy seats on the floor of the House of Representatives." This was referred to a committee of seven members, of which Mr. Pendleton was chairman. From this body was reported a bill in two sections, one of which conferred upon the heads of departments the privilege of attending the sessions of the House for the purpose of participating in the debates upon subjects appropriate to their respective Departments; while the other made it obligatory for them to attend at stated times, for the purpose of giving information in reply to questions that might be propounded. A schedule of changes in the rules of the House, fitting the new procedure into the order of business, was likewise presented.

The committee reported ³¹ a variety of arguments in favor of the bill, including an appeal to early precedents, a feature which was incorporated in the very form which it now took, into a Senate Report on the same subject some fifteen years later, which will be noticed in its order. The House Report of 1864 dwells upon the necessity of speedy and accurate information: "The exigencies of these times have made members of this Congress so familiar with cases of this nature that the words, 'conscription,' 'legal-tender,' and 'taxation,' recall the painful embarrassments by which their decision was surrounded." The report goes on to assert that the members of the Cabinet already exercise a great influence over the Legislature, and to maintain that this should be open instead of secret. The advantages to be derived from an opportunity for the House to question the heads of departments face to face is illustrated as follows: "If a Secretary of War of a former administration had been on the floor of this House

³¹ *House Report 43*, Thirty-eighth Congress, First Session.

during the session of 1860-61, a few questions put and answered in half an hour, on any proper day, would have disclosed a state of affairs in relation to the sale of arms and the removal of guns and ammunition which the Committee on Military Affairs developed after many days, with the aid of sergeant-at-arms, subpoenas, witnesses, and stenographers—too late effectually to prevent the evil.”

In the whole history of the subject, no debate in Congress has been so thorough-going. Morrill, of Vermont and S. S. Cox, of Ohio, spoke against the bill; Pendleton and James A. Garfield, in favor of it. Mr. Garfield's speech includes the most careful examination of the attitude of the early government that has ever been presented to Congress, although he fell into several errors through relying exclusively on the *Annals of Congress*. This speech has been cited as an argument for direct contact of heads of departments with Congress, springing from an exceptionally long legislative experience; hence it is well to notice that it was very early in Mr. Garfield's career when it was delivered. It was the fate of the bill to expire with the Congress without coming to a vote.

Fifteen years later Mr. Pendleton, then a member of the Senate, brought up the subject for a second time, in the form of a bill introduced March 26, 1879, modelled after that which he had reported to the House of Representatives in 1864. Like its predecessor, it provided for both voluntary and obligatory attendance. The chief point of difference was that the Senate, as well as the Lower House, was to admit the heads of departments to its floors. This bill was referred to a select committee of ten members, who were George H. Pendleton, W. B. Allison, D. W. Voorhees, James G. Blaine, M. C. Butler, John J. Ingalls, O. H. Platt, Thomas F. Bayard, Roscoe Conkling, and J. G. Farley. From this committee was put forth, almost two years after its appointment, February 4, 1881, a report ³² favoring the direct participation of the heads of Executive Departments in the proceedings of

³² *Senate Report 837*, Forty-sixth Congress, Third Session.

Congress, and signed by all the members of the committee except Bayard and Conkling. This document has ever since been cited to show the headway which the proposition has made, and its historical portion, in the main restated from the House Report of 1864, has been much quoted as an authoritative statement of a strong argument from early precedents in favor of the plan. Extracts from the *Annals of Congress* were included to show that the proposed expedient would not be a new venture. The instances cited are: (1) the attendance of the Secretary of Foreign Affairs upon the Senate, July 22, 1789, Jefferson's name being used instead of Jay's; (2) the visit of the President to the Senate Chamber, in company with Secretary Knox, August 22 and 24, 1789; (3) the appearance of Secretary Knox in the House of Representatives, bearing sundry statements and papers, August 7 of the same year; and (4) the visit of Secretary Knox to the House of Representatives, when he delivered the statement of the troops in the service of the United States, August 10, 1789. The report boldly goes on to say: "Instances of this kind might be almost indefinitely multiplied, but these serve sufficiently to exhibit the practice established at an early day by those who framed the Constitution." The reasons for rejecting these events as proofs of any settled practice have already been set forth; but the report freely adds conjecture to the slender facts. Thus the committee further says: "When Hamilton made his great report on the public credit in 1790 he was . . . required to make it in writing, because the details were so numerous that, delivered orally, they would not remain in the memory of hearers; but the power and the propriety of requiring the personal presence of the Secretary were not then called in question, nor have they been questioned at any time since." The determined stand of the House of Representatives in 1792 against summoning the Secretaries is quite ignored.

The committee goes on to describe in large terms the influence that the heads of departments already exert through annual reports, special reports, private consultations, and attendance at committee meetings; and to maintain that the

mode of their influence would be improved by consultation face to face between these officers and Congress sitting as a body. As to the objection that the Executive would encroach upon the Legislature, and the contrary one, that the Legislature would encroach upon it, the report maintains that each power would sustain itself against the other. This point that the influence of the Executive upon the proceedings of Congress is already a great one is found in almost all of the discussions of the subject from inside of the government. Although the bill introduced in 1879 received a distinguished support from its committee, it was far from awakening any general interest, and never came to a vote.

The subject was brought up in Congress for the third time on January 5, 1886. John D. Long, ex-Secretary of the Navy, at that time a member of the House of Representatives, introduced a bill "to provide that the principal officer of each Department may occupy a seat on the floor of the House of Representatives." This bill, which did not include the Senate, provided for only a voluntary attendance. It was referred to the Committee on the Reform of the Civil Service, and nothing more was heard of it; it does not appear that the gentleman who introduced it took any active interest in it.

By this examination of Congressional journals, debates, and reports, two facts are established: first, it has been a mistake to suppose that the early Congresses afford a precedent for admitting Executive officers to a direct participation in Legislative proceedings; second, in Congress itself, since legislative reform has become the subject of conscious discussion, very little favor has ever been shown to any form of the proposition to bring the heads of departments into direct contact with the Legislative body. To be sure, a few expressions of opinion on the part of distinguished public officers can be found, which perhaps indicate that the proposition has had a more weighty support in official circles than this investigation shows. It is stated upon the best authority³³ that Mr. Blaine, who had signed the Senate Report upon the subject in 1881, said, while

³³ Hart, *Practical Essays on American Government*, p. 5.

he was Secretary of State, that he would give two years of his life for an opportunity to debate in Congress a measure which he considered of prime importance. Mr. Gamaliel Bradford, in his *Lesson of Popular Government*, states confidently that President Hayes once expressed himself privately in favor of the plan. George H. Bristow and John Sherman are also cited by Mr. Bradford as favoring such an expedient in the light of their experience at the head of the Treasury Department. It does not appear, however, that any of these gentlemen ever advocated the measure publicly, although the most important bill upon the subject was before Congress in the presidency of Mr. Hayes and the secretaryship of Mr. Sherman. It could be said, on the other side, that Senator George F. Hoar and Speaker Thomas B. Reed expressed themselves as opposed to the plan.

Outside of official circles, a discussion of this subject has been carried on since about 1870. Articles have occasionally appeared in the leading magazines, and several treatises have been published, which discuss the question of bringing together or keeping apart the Executive and Legislative branches of the National government. This propaganda seems to have been started by the English writer, Walter Bagehot, in his *English Constitution*, first published in 1867, with a second edition in 1873, which went further than the first in its comparison of the American with the English system of government. It appears to have been from this source that the terms "presidential system" and "parliamentary system" came into familiar use. Many academic writers, since that time, have set over against each other what Bagehot calls the two species of "government by discussion." "Committee government" or "Cabinet government" is another expression for the same antithesis, and more fully brings out the idea of the pre-eminence of the standing committees of Congress in the process of law-making. This phase of the subject was set forth more distinctly than ever before in Woodrow Wilson's *Congressional Government*, which first appeared in 1885. Other favorite terms among these writers are "responsible government," "ministerial responsibility," and "Cabinet re-

sponsibility," all of which refer to such a relation between the Executive and the Legislature as exists between the English Cabinet and the House of Commons. As these terms suggest, the academic discussion of this subject spreads out to greater issues than have been contemplated in the discussion in Congress. The largest group of these writers hold that the result of merely extending to the Houses of Congress as a whole the privileges which the heads of departments have always enjoyed with the committees of Congress would be insignificant, and that in order to effect any great change a revolution would be necessary, involving an amendment to the Constitution. On the question whether the "parliamentary system" would work better in the United States than the "presidential system" has done, there is no general agreement among the writers. Some are non-committal; a few are enthusiastic in favor of the English system. A tendency is, however, discernible among this first group of writers to state in the lowest terms the actual influence of the American Executive upon the Legislative branch of the government. This tendency seems to have arisen from a feeling that the President was in the hands of a headless but overpowering Congress, so long as any portion of the Tenure-of-Office Act of 1867 remained in force, inasmuch as the most important contribution to the discussion which reflect this view were written prior to 1887, when the repealing of that law was completed.

There are, however, a few writers who contend that, if only some such step were taken as Pendleton proposed in Congress, the quality of legislation would be greatly improved without radically changing the American system; and a parallel ³⁴ has been found in the working of the relation between the Executive Board of Switzerland and the Legislature.

A third group of writers take the position that no step in the proposed direction should be regarded with favor, because American ills do not demand an English cure. The principal figures ³⁵ in this group are officers of the government who have contributed to the discussion in the magazines.

³⁴ Hannis Taylor, *North American Review*, 1894, August.

³⁵ George F. Hoar, *North American Review*, 1879, February; Thomas B. Reed, *Illustrated American*, 1897, July.

Whatever the shade of opinion of the writers who favor some form of the proposed innovation, it must be confessed that they have had no influence in stimulating the National government to reform itself. One reason for this failure is an ignorance of the real attitude of the government, present and past, towards the proposed expedient. Another reason is that very much of the discussion has been so purely theoretical that it has almost overlooked certain very great and highly practical aspects of the question. There has been little inquiry how far the American system, with all of its many extra-Constitutional features, is a growth that has developed naturally from a variety of conditions, partly determined by the rupture with the traditions of the past, and partly incident to the development of a new continent. Or, stating the point from the other side, there has been no thorough-going discussion of the question whether the institutions which have an outward resemblance to the English system could have developed a like substance under American conditions.

LIST OF VISITS PAID BY THE HEADS OF EXECUTIVE DEPARTMENTS TO THE
HOUSES OF CONGRESS.

A. Occasions on which the Secretary of Foreign Affairs and the Secretary of War took part in executive proceedings of the Senate:

1. 1789, June 16, 17. Secretary Jay visits the Senate on business pertaining to the appointment of William Short as Charge d'Affaires at Paris. (Executive Journal of the Senate, vol. 1, p. 6.)

2. 1789, July 22. Secretary Jay attends the Senate to give information relative to a Consular Convention between France and the United States. (Executive Journal of the Senate, vol. 1, p. 7.)

3. 1789, August 22, 24. Secretary Knox accompanies President Washington to the Senate to give information relative to a treaty with the Creek Indians. (Executive Journal of the Senate, vol. 1, pp. 20, 23.)

B. Occasions on which the Secretary of War and the Secretary of Foreign Affairs delivered to the Houses of Congress messages and other documents from the President of the United States:

1. Senate in Executive Session:

a. 1789, May 25, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 3.)

b. 1789, September 17, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 26.)

c. 1789, September 28, Secretary Knox. Executive Journal of the Senate, vol. 1, p. 34.)

d. 1790, January 11, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 36.)

e. 1790, August 7, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 58.)

f. 1791, October 26, Secretary Knox. (Executive Journal of the Senate, vol. 1, p. 87.)

2. Senate in Legislative Session:

a. 1789, August 10, Secretary Knox. (Journal of the Senate, First Session, p. 91.)

b. 1789, September 26, Secretary Jay. (Journal of the Senate, First Session, p. 151.)

c. 1789, September 29, Secretary Jay. (Journal of the Senate, First Session, p. 159.)

d. 1790, January 12, Secretary Knox. (Journal of the Senate, Second Session, p. 10.)

e. 1790, January 21, Secretary Knox. (Journal of the Senate, Second Session, p. 14.)

f. 1791, October 27, Secretary Knox. (Journal of the Senate, Fourth Session, p. 15.)

3. House of Representatives:

a. 1789, August 7, Secretary Knox. (Journal of the House, First Session, p. 92.)

b. 1789, August 10, Secretary Knox. (Journal of the House, First Session, p. 96.)

c. 1789, September 16, Secretary Knox. (Journal of the House, First Session, p. 141.)

d. 1790, January 12, Secretary Knox. (Journal of the House, Second Session, p. 12.)

e. 1790, January 21, Secretary Knox. (Journal of the House, Second Session, p. 17.)

f. 1790, March 1, Secretary Knox. (Journal of the House, Second Session, p. 43.)

g. VGTJ, March 12, Secretary Knox. (Journal of the House, Second Session, p. 56.)

h. 1791, October 27, Secretary Knox. (Journal of the House, Fourth Session, p. 14.)

LIST OF MATERIALS CONSULTED.

Journals of Congress; Executive Journal of the Senate; Annals of Congress; Congressional Globe; Congressional Record; House Reports; Senate Reports; Journal of the Congress of the Confederate States of America; Statutes at Large of the Provisional Government of the Confederate States of America, and of the First and Second Congresses.

Journal of William Maclay (1890); *Works of Washington* (Sparks, 1834; Ford, 1889); *Works of Alexander Hamilton* (Lodge, 1885); J. C. Hamilton, *History of the Republic*, etc. (1857); *Works of Jefferson* (Ford, 1892); *Works of Madison* (Rives, 1859; Hunt, 1900); *Works of Fisher*

Ames (1854); *Works of Gallatin* (Adams, 1879); *Works of John Adams* (1856); *Memoirs of John Quincy Adams* (1874; Knox MSS.*

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The Nation (April, 1873; April, 1879; February, 1881; April, 1888); *The Atlantic Monthly* (July, 1882; February, 1886; April, 1886; June, 1890); *The North American Review* (January, 1877; February, 1879; March, 1894; August, 1894); *International Review* (March, 1877; August, 1879); *Contemporary Review* (December, 1885); *Overland Monthly* (January, 1884; February, 1887).

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* By the courtesy of the New England Genealogical Society.